

Dale Joseph Burke,	)	
	)	
Plaintiff,	)	
	)	<b>REPORT AND RECOMMENDATION</b>
vs.	)	
	)	
North Dakota Department of Correction	)	Case No. 1:12-cv-131
and Rehabilitation, et. al.,	)	
	)	
Defendants.	)	

Private citizens have no constitutional or other right to a criminal investigation. See Linda R.S. v. Richard D., 410 U.S. 614, 619 (1973) ("a private citizen lacks a judicially cognizable interest in the prosecution or nonprosecution of another"); see also Smith v. Shaw, No. 5:09–01001, 2012 WL 1832340, at \* 1 (S.D. W.Va. April 25, 2012) (citing United States v. Oguaju, 76 F.App’x 579, 581 (6th Cir.2003); Hester v. West Virginia, 2008 WL 4298471, \* 6 (S.D.W.Va.), Powell v. Kopman, 511 F. Supp. 700, 704 (S.D.N.Y. 1981), for the proposition that a violation of a federal statute does not provide for a private cause of action). Moreover, the court does not have the authority to direct that an individual be prosecuted. See United States v. Batchelder, 442 U.S. 114,

124 (1979) (stating that the decision whether to prosecute and what charges to file rest in the prosecutor's discretion); see also Inmates of Attica Corr. Facility v. Rockefeller, 447 F.2d 375 (2nd Cir.1973) (finding that the authority to investigate and initiate criminal complaints rest exclusively with the United States Attorney); Young v. Harold, No. Civ.A. 04CV245WOB, 2005 WL 1048117, at \*8 (E.D. Ky. May 3, 2005) (opining that federal courts have not authority to initiate criminal proceedings).

Based on the foregoing, undersigned **RECOMMENDS** that the court **DENY** plaintiff's "Motion for Court Order to Have the Following Persons Charged with Criminal Violation of Conspiracy Against Rights Pursuant to 18 U.S.C. § 241" (Docket No. 14).

#### **NOTICE OF RIGHT TO FILE OBJECTIONS**

Pursuant to D.N.D. Civil L.R. 72.1(D)(3), any party may object to this recommendation within fourteen (14) days after being served with a copy of this Report and Recommendation. Failure to file appropriate objections may result in the recommended action being taken without further notice or opportunity to respond.

**IT IS SO ORDERED.**

Dated this 8th day of January 2012.

/s/ Charles S. Miller, Jr.  
Charles S. Miller, Jr., Magistrate Judge  
United States District Court